

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

CASE NO.: 15-00504-CR-MKB

- against -

DWAYNE ANTHONY MYERS,  
also known as "Tywan Leon Hall"

Defendant.

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**MOTION TO WITHDRAW AS COUNSEL  
AND FILE AFFIDAVIT UNDER SEAL**

Pursuant to Rule 1.16, the Law Offices of Simone Bertollini, P.C. and Paul F. O'Reilly, Esquire move this Court for an order granting permission to withdraw as counsel for Defendant, Dwayne Anthony Myers. The reasons for this request are Defendant's failure to pay legal bills and there has been a fundamental disagreement causing an irremediable breakdown in the attorney client relationship, which prevents the undersigned counsel from providing effective assistance of counsel. The details of these reasons are set forth in proposed Declarations of Simone Bertollini, Esquire and Paul F. O'Reilly, Esquire in support of the within motion to withdraw as counsel. The Law Offices of Simone Bertollini, P.C. and Paul F. O'Reilly, Esquire request that, if the Court wishes, they be permitted to file the proposed Declarations under seal allowing for the Court's *in camera* review and review by Defendant, but denying review by Plaintiff.

Respectfully submitted,

Date: November 11, 2015  
New York, New York

/s/ Paul F. O'Reilly, Esquire  
PAUL F. O'REILLY, ESQ.  
*Pro Hac Vice*  
Law Offices of Simone Bertollini, P.C.

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Attorneys for Defendant

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW  
AS COUNSEL AND FILE DECLARATION UNDER SEAL**

**ARGUMENT**

**I. Withdrawal is proper.**

Under Rule 1.16 of New York Professional Conduct, “Declining or Terminating Representation” counsel may withdraw if “the client deliberately disregards an agreement or obligation to the lawyer as to expenses or fees. See Rule 1.16(c)(5). Counsel may also withdraw if there has been a fundamental disagreement which renders the representation unreasonably difficult to for the lawyer to carry out employment effectively. See Rule 1.16(c)(7).

It is well settled that a client’s failure to pay legal fees constitutes a satisfactory reason for withdrawal as counsel. *Team Obsolete, Ltd. v. A.H.R.M.A., Ltd.*, 464 F.Supp. 164, 165-66 (E.D.N.Y. 2006). It is also well settled that a fundamental disagreement between the attorney and the client which renders the representation unreasonably difficult to for the lawyer to carry out employment effectively constitutes a satisfactory reason for withdrawal as counsel. The proposed Declarations set forth in detail Defendant’s failure to pay outstanding legal fees and the law firm’s efforts to address the legal fee matter to avoid the need for this motion, as well as

fundamental disagreement causing an irremediable breakdown in the attorney client relationship which prevent the undersigned counsel from providing effective assistance of counsel. *Furlow v. City of New York*, 90 Civ. 3956, 1993 WL 88260 at \*2 (S.D.N.Y. March 22, 1993). The law is clear that where there has been a breach of trust on the part of the client or a challenge to the attorney's loyalty, the attorney should be permitted to withdraw. See *Hunkins v. Lake Placid Vacation Corp.*, 508 N.Y.S.2d 335, 337 (3d Dep't 1986); *In re Meyers*, 120 B.R. 751, 752 n.2 (Bankr. S.D.N.Y. 1990).

In order to not prejudice Defendant, Simone Bertollini, P.C. and Paul F. O'Reilly, Esq. refrain from in the instant filing from setting forth those details and relies on the Court to determine to order that the proposed Declarations be filed under seal, with a copy to be served on Defendant for the Court's review *in camera*, if the Court wishes to satisfy itself that such failures constitute "satisfactory reasons" in the instant context.

Because Rule 1.16 mandates that an attorney may seek to withdraw only where "withdrawal can be accomplished without material adverse effect on the interests on the client," a great weight is placed on the stage of proceeding in which the request is made. Here, the request is not being made on the "eve of trial." Defendant was indicted on three charges on or about October 7, 2015. Around or about Wednesday, November 4, 2015 the Government mailed out discovery to counsel. Some discovery is still outstanding. A status conference hearing is scheduled for November 19, 2015. Additionally, counsel has worked on the matter diligently and sought payment of fees diligently from Defendant. This is not a situation where dilatory in making the motion to withdraw. *State v. MacMilan*, 561 N.Y.S. 2d 512, 515 (1990).

If The Law Offices of Simone Bertollini, P.C. and Paul F. O'Reilly, Esquire are permitted to withdraw, we respectfully request that Defendant be permitted 30 days to enter the

appearance of successor counsel. See *HCC, Inc. v. RH&M Machine Co.*, 1998 U.S. Dist. LEXIS 10977 (S.D.N.Y. 1998) (withdrawal granted and Defendant granted 30 days to select successor counsel). Once Defendant has selected such counsel, Simone Bertollini, P.C. and Paul F. O'Reilly, Esquire will assist counsel to become knowledgeable about the case and transfer all files.

## **II. The Supporting Declarations Should be Filed Under Seal.**

Because the proposed Declarations pertain to attorney-client communications and legal fees, prevailing law supports it being filed under seal and not being provided to Plaintiff in order to avoid potential prejudice. *Team Obsolete, Ltd. v. A.H.R.M.A., Ltd.*, 464 F.Supp. 164-165 (E.D.N.Y. 2006). *The Team Obsolete* Court opined that, “a review of the relevant case law demonstrates that documents in support of motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party and its counsel, and that this method is viewed favorably by the courts.” *Id.* (citing *Weinberger v. Provident Life & Cas. Ins. Co.*, No.97-cv-9262, 1998 U.S. Dist. LEXIS 19859) (S.D.N.Y. 1998)).

If the Court wishes to review the proposed Declarations in camera, it will see that the Declarations contains confidential information about the legal fees and a fundamental disagreement which renders the representation unreasonably difficult to for the lawyer to carry out employment effectively. The Government has no interest in the outcome of the fee dispute or disagreements between counsel and Defendant, and thus the Declarations should be permitted to be filed under seal. *Id.* (citing *Harrison Conference Servs., Inc. v. Dolce Conference Servs., Inc.*, 806 F.Supp. 23 (E.D.N.Y.1992)).

For all of the foregoing reasons, counsel respectfully requests that they be permitted to

file the proposed Declarations under seal, and that upon review, the Court grant the within motion to withdraw as counsel for Defendant in this matter.

Respectfully submitted,

Date: November 11, 2015  
New York, New York

/s/ Paul F. O'Reilly, Esquire  
PAUL F. O'REILLY, ESQ.  
*Pro Hac Vice*  
The Law Offices of Simone Bertollini, P.C.  
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Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 11, 2015, I electronically filed this motion to withdraw as counsel and supporting papers with the Clerk of the Court using CM/ECF. I also certify that the foregoing has been mailed this day to Defendant, Dwayne Anthony Myers via regular and certified mail to the following address:

Dwayne Anthony Myers  
c/o Metropolitan Detention Center  
80 29th St  
Brooklyn, New York, 11232

/s/ Simone Bertollini, Esquire  
SIMONE BERTOLLINI, ESQ.  
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**ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL**

Having considered The Law Offices of Simone Bertollini, P.C. and Paul F. O'Reilly, Esquire's motion to withdraw as counsel for Defendant Dwayne Anthony Myers, it is hereby ORDERED that Simone Bertollini, Esquire and Paul F. O'Reilly, Esquire are permitted to withdraw as counsel, and Defendant is permitted 30 days to enter the appearance of successor counsel.

IT IS SO ORDERED.

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Hon. Margo K. Brodie  
United States District Judge

Copies furnished to:  
All Counsel of Re